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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/553,020

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Robert Kramer

J&J 5031USPCT

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27777 7590 04/17/2008  
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EXAMINER

REICHLE, KARIN M

ART UNIT

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3761

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,020	<b>Applicant(s)</b> KRAMER, ROBERT	
	<b>Examiner</b> Karin M. Reichle	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/11/05</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

#### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claim 6 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to because Figures 1-6 are not consistent with the description thereof bridging pages 4-5, where the use shown? Corrected drawing sheets in

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compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Description***

3. The abstract of the disclosure is objected to because the abstract is a copy of the PCT abstract. Prior to allowance, if any, a clean copy of such abstract on a separate page should be provided. Also, implied, i.e. “according to the invention”, and legal, i.e. “comprises”, terminology should be avoided. Correction is required. See MPEP § 608.01(b).

4. The disclosure is objected to because of the following informalities: The various sections of the specification, see 37 CFR 1.77(b), should be preceded by subtitles. Also the

description of Figures 1-6 bridging pages 4-5 and in the third full paragraph of page 5, i.e. in use, lengthened, is not consistent with the Figures.

Appropriate correction is required.

### ***Claim Objections***

5. Claims 1 and 4-12 are objected to because of the following informalities: Line 1 of each claim is missing a word or words. In claim 7, third to last line, “a” should be --the--. In claim 11, line 3, “is positioned” should be deleted. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

6. Claims 1, 4-6, and 9-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 1 and 4-6, is the loop on line 6 and that on the last two lines of claim 1 one and the same, i.e. at a minimum how many loops are being required and what is the function of each such loop? Also, the description of the tape on the last four lines is unclear, i.e. is the loop part of the tape at a minimum or the tape and the second end at a minimum? Is the free end and the second end one and the same? In regard to claim 9, is the fold in this claim and that in claim 7 one and the same, i.e. at a minimum how many folds are being required? In claims 10 and 11, a positive antecedent basis for “the withdrawal tape”, lines 3 and 4, respectively, and “the tampon body”, lines 6-7 of claim 10, should be defined. Also, the folding step of claim 11

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is indefinite in that it is incomplete. Therefore, in claim 12, a positive antecedent basis for lines 2-3, i.e. “is folded back...web”, should be set forth.

### ***Claim Language Interpretation***

7. Claims 1 and 4-9 are product by process claims, i.e. see MPEP 2113, i.e. “[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).” Therefore, and additionally due to the lack of clarity discussed in paragraph 6 supra, the end product of claim 1 is considered to be a tampon comprising a body and a tape having a length, a first end connected to the body, a portion having a knot, and at least the tape having a releasable loop, and a free end extending from the knot. Claim 4 is considered to require the structure of claim 1 having the claimed capability. Claim 5 is considered to require a half loop, i.e. a slip knot, and claim 6, is considered to require a Windsor knot, i.e. a double slip knot, see discussion also infra. Claim 7 is considered to require a tampon body and a withdrawal tape which is fastened on the tampon body, has a length, and has at least one releasable fold arranged at least partly within the tampon body retained between adjacent portions of the tampon body. Claim 8 is considered to require the body of claim 7 being a rolled and compressed tampon body. Claim 9 is considered to require the structure of claim 7 having the claimed capability. Due to the lack of clarity discussed supra the folding step of claim 11 is interpreted to require folding of the tape

onto a portion of the web. It is noted that the terminology “in particular for feminine hygiene” on line 1 and 3, respectively, of claims 1 and 7 is not deemed to further limit the terminology “Tampon”, i.e. merely a preference.

### ***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1 and 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown et al ‘984 as evidenced by Dibben et al ‘746, McConnell ‘750, and Van Dyke ‘545.

Claim 1: See ‘984, at col. 3, lines 56-59, the abstract, e.g. “crocheted”, col. 1, lines 4-11, 42-43 and 60-61, col. 2, lines 1-4, 9-14, 35-36 and 47 et seq, and col. 3, lines 37-41, i.e. see Claim Language Interpretation section supra, hereinafter referred to as CLI, ‘984 teaches a tampon comprising a body and a tape, i.e. a string, having a length, a first end connected to the body, a portion, e.g. the free end or the crocheted portion, see infra, having a knot, and the tape being crocheted, i.e. a series of loops. The claim is considered to further require a loop which is releasable, i.e. have the function, capability or property of being releasable, and a free end extending from the knot. However, a crochet/lock stitch or loop has a lock/knot at its base from which the loop ends, i.e. the free ends, extend, and is releasable/may unravel from such lock/knot, e.g. by loosening/pulling the free ends, i.e. a slip knot/stitch, as evidenced by ‘746 at Figures 3a-f, and col. 1, line 14, ‘750 at Figure 1, and the sentence bridging cols. 1-2, and ‘545 at

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Figure 4, and col. 2, lines 4-9. Thus, at the very least, the crocheted string of '984 includes the claimed structure as best understood. Therefore, there is sufficient factual evidence that such same structure inherently also includes the same function, capability and property as claimed, i.e. releasable, see MPEP 2112.01. It is noted that the yarns which comprise the tape of '984 have an initial length before use and crocheting of such reduces such length.

Claim 4: See the CLI, i.e. claim 4 is considered to require the structure of claim 1 having the capability of the claim, i.e. does not release by virtue of the loop being pulled, and the discussion of claim 1, i.e. the prior art teaches a crochet/lock stitch, i.e. teaches/is evidenced that such stitch is tightened by pulling loop. Therefore, there is sufficient factual evidence that such same structure inherently also includes the same function, capability and property as claimed, i.e. not releasable, see MPEP 2112.01.

Claim 5: See CLI, i.e. the claim is considered to require a half loop. See the discussion of claim 1 supra, and Figures 1-6 of the instant application, i.e. as best understood, a crochet/lock stitch is a "half loop" like that shown in instant Figures 1-6. See also discussion of claim 6 infra.

10. Claims 7-9 and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Etz '912.

Claim 7: See '912 at Figures 7, 10, and 12-17, and col. 6, line 15-col.7, line 4, i.e. see CLI, '912 teaches a tampon body 2 and a withdrawal tape 1 which is fastened on the tampon body, has a length, and has at least one releasable fold, see 1 and 68 in Figures 14-17, arranged at least partly within the tampon body retained between adjacent portions of the tampon body. It is noted the length of the tape of '912 is changed before or during use, i.e. is releasable such that the effective length of the withdrawal tape is increased.



Claim 8: See CLI, i.e. claim 8 is considered to require the body of claim 7 being a rolled and compressed tampon body, see Figures 15-21 and col. 6, lines 40-59.

Claim 9: See CLI, i.e. claim 9 is considered to require the structure of claim 7 having the claimed capability, i.e. at least one fold of the withdrawal tape within the tampon body can be released by virtue of pulling the free end of the withdrawal tape being pulled, in order to increase the effective length of the withdrawal tape outside the tampon, see again Figures 14-17 and col. 6, line 60-67.

Claims 11-12: See discussion of claims 7-9, especially Figures 7, 10 and 12-17, i.e. '912 teaches producing a tampon by positioning a withdrawal tape around a fibrous tampon web such that the withdrawal tape extends transversely to the fibrous tampon web and a portion of the withdrawal tape extends laterally beyond the fibrous tampon web, e.g. Figures 7-8, folding the portion of the withdrawal tape that extends beyond the fibrous tampon web partly thereonto, e.g. Figures 10-12, rolling and pressing the fibrous tampon web to form a tampon body with the withdrawal tape fastened therein and to retain the folded portion of the withdrawal tape in the tampon, Figure 13 and 15-17 and col. 6, lines 40-60, and the withdrawal tape is folded onto the fibrous tampon web in a direction selected from the group consisting of parallel to, obliquely in relation to, or perpendicularly to the transverse direction of the fibrous tampon web, see Figures again.

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al '984 as evidenced by Dibben et al '746, McConnell '750, Van Dyke '545 and Lynch '419. See CLI, i.e. claim 6 is considered to require a Windsor knot, i.e. a double slip knot. While '984 teaches a string of crochet stitches for creating a regularly textured surface with enhanced grippability, it does not teach creating such with Windsor knots. It is further noted that crochet stitches are also slip stitches or knots. Furthermore as evidenced by Lynch '419 at col. 2, lines 53-56 Windsor knots are also considered to be slip knots but doubled so as to require more length to form. Therefore, to make the single slip knots of '984 double slip knots instead, i.e. Windsor knots, would be obvious to one of ordinary skill in the art in view of the recognition that such would, at the very least, also provide a regularly textured surface, *In re Siebentritt*, 54 CCPA 1083, i.e. two equivalents are interchangeable for the desired function, express suggestion of desirability not needed to render such substitution obvious, and, at the very most, not only provide a regularly textured surface but also enhance the texture and thereby grippability thereof due to the doubling of textured loop surface and the desire of grippability by '948.

13. Claims 1 and 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimatani '408 in view of Sivyer '018.

Claim 1: See '804 at Figures and the paragraph bridging cols. 2-3 and col. 4, lines 32-39, i.e. see CLI, '804 teaches a tampon comprising a body 1 and a tape 2, i.e. a string, having a length, a first end connected to the body, a portion having a length adjuster and at least the tape having an adjustable loop. The claim is considered to further require the portion have a knot, the

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loop be releasable, i.e. have the function, capability or property of being releasable, and a free end extending from the knot. While the adjuster appears to be a knot in the Figures, such is not explicitly disclosed as such. However, '804 does explicitly disclose the adjuster 3 may be any type of string length adjuster. Furthermore, see '018 at the Figures and, e.g., col. 3, lines 4-18 col. 2, line 45-col. 4, line 26, i.e. string length adjuster in a feminine hygiene article which is a knot from which a free end and loop extends and the loop is capable of complete diminishment. Therefore to make the string length adjuster of '804 that of '018 instead would be obvious, *In re Siebentritt*, 54 CCPA 1083, i.e. two equivalents are interchangeable for the desired function, express suggestion of desirability not needed to render such substitution obvious. Furthermore, in so doing, at the very least, the string of '804 includes the claimed structure as best understood. Therefore, there is sufficient factual evidence that such same structure necessarily and inevitably also includes the same function, capability and property as claimed, i.e. releasable. It is noted that the prior art, at most, also appears to include a loop formed by a knot which is completely diminished /released when a free end is pulled (Note the direction of pulling is not claimed) and the tape of the prior art has a length which can be increased or decreased, i.e. adjusted, before and during use.

Claim 4: See the CLI, i.e. claim 4 is considered to require the structure of claim 1 having the capability of the claim, i.e. does not release by virtue of the loop being pulled, and the discussion of claim 1, i.e. the prior art teaches/obviously teaches a knot and/or loop such that the loop is enlarged by pulling (Note again that the direction of pulling is not claimed). Therefore, there is sufficient factual evidence that such same structure necessarily and

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inevitably also includes the same function, capability and property as claimed, i.e. not releasable.

Claim 5: See CLI, i.e. the claim is considered to require a half loop. See the discussion of claim 1 supra, and Figures 1-6 of the instant application, i.e. as best understood, the prior art loop is a “half loop” like that shown in instant Figures 1-6. See also discussion of claim 6 infra.

14. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shimatani ‘804 in view of Sivyer ‘018 and as evidenced by Lynch ‘419.

See CLI, i.e. claim 6 is considered to require a Windsor knot, i.e. a double slip knot. While the prior art teaches a tampon string length adjuster can be of any type of adjuster and that a slip/slide knot can be a string length adjuster, it does not teach an adjuster of/by a Windsor knots. It is noted that the instant application is silent as to the motivation of using such a knot as compared to other adjusters. Furthermore as evidenced by Lynch ‘419 at col. 2, lines 53-56 Furthermore as evidenced by Lynch ‘419 at col. 2, lines 53-56 Windsor knots are also considered to be slip knots but doubled so as to require more length to form, i.e. Windsor knots are also length adjusters but double knots rather than single knots. Therefore, to make the length adjuster of the prior art a double slip knot instead, i.e. a Windsor knot, would be obvious to one of ordinary skill in the art in view of the recognition that such would, at the very least, also provide length adjustment, *In re Siebentritt*, 54 CCPA 1083, i.e. two equivalents are interchangeable for the desired function, express suggestion of desirability not needed to render such substitution obvious, the desire of adjustment by the prior art and lack of disclosure of criticality of a knot of the Windsor type by the instant application.

15. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shimatani '804 in view of Sivyer '018 and Hinzmann '018.

See discussion of claims 1 and 4-6 supra. Therefore the prior art teaches producing a tampon comprising the steps of positioning the withdrawal tape around a fibrous tampon web such that the withdrawal tape extends transversely and laterally beyond the fibrous tampon web, see Figures 1 and 2 and the paragraph bridging cols. 2-3, rolling and pressing the fibrous tampon web to form the tampon body with the withdrawal tape fastened therein, see Figures 2-3, and knotting the withdrawal tape to form a releasable loop. This claim further requires the knotting be outside the tampon body, i.e. after rolling and pressing whereas the prior art teaches such prior to rolling and pressing. The prior art is silent as to the motivation for such as is the instant application. However, see '587 at the Figures and, e.g. col. 1, lines 7-54 and col. 2, lines 1-9, i.e. faster and/or more reliable to loop tampon withdrawal strings after formation of tampon body. Therefore to perform the knotting step of the prior art subsequent to rolling and pressing instead would be obvious to one of ordinary skill in the art in view of the teachings of '018 due to the recognition that such would provide faster and/or more reliable, i.e. more economic, production of tampon withdrawal string loops, the desire by the prior art to produce a loop in the withdrawal string and the desire in with any production to be more economic and the lack of disclosure of criticality of such by the instant application.

### ***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied art also teaches disclosed/claimed features of the invention

or combinations thereof. Also, for example, Johnson '636 cited by Applicant teaches the invention as claimed in at least claim 7.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karin M. Reichle/  
Primary Examiner, Art Unit 3761

April 11, 2008